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U.S. Department of State, CA/OCS/PRI
Adoption Regulations Docket Room
SA-29
2201 C Street, NW
Washington, DC 20520

Re: docket number State/AR-01/96

To Whom It May Concern:

Please find enclosed two hard copies of my comments on the Hague Intercountry Adoption Regulations for consideration by the Department of State and publication in the Federal Register as required by law. I am simultaneously sending a copy by email to adoptionregs@state.gov.

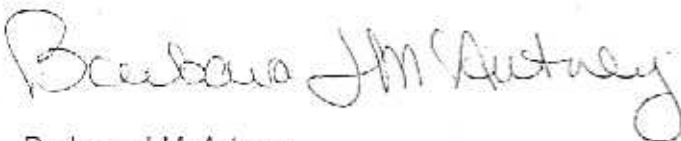
Also enclosed is floppy disc of comments.

Please note that I am also sending copies of these comments along with proof of their being submitted to various groups and Congressional Members.

Acton Burnell and DOS have a history of "losing" and then refusing to publish my prior critical comments submitted in 2001 as part of the regulatory meeting program.

I would like to assure that these comments are considered and published this time.

Very truly yours,



Barbara J McArtney

Comments on the Proposed Regulations to the Hague Intercountry Adoption Act

Submitted by:

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INTRODUCTION/OVERVIEW

The US International Adoption system is broken. Abuses are rampant, already high fees are escalating and corruption is commonplace. In recent years many sending countries have closed due to disclosure of baby selling and abuses of the process. Many more are likely to close if their equally corrupt processes are exposed. Hague contains much needed consumer protection. It offers a federal framework and unity of law for the state licensed agencies. But it has missed its mark on the core purpose of Hague – elimination of corruption in the foreign process and protection of basic human rights of children.

The process of Hague Implementation has been driven by agency advisors, agency concerns and protection of agency rights. The whole issue of assuring "the best interests of the child" has been approached backwards - from the agency viewpoint- not the child's. All efforts have been limited to creation of a system that preserves the status quo of the existing agency system.

This is the same system that brought us the scandals in Cambodia, Romania, Vietnam, Guatemala and Georgia.

The proposed Hague regulations create a complex tiered system of reporting, authorization and administrative responsibility for adoption agencies. They mistakenly substitute bureaucratic licensing procedures in the US for necessary legal enforcement of adoption procedures in foreign countries.

Reform is badly needed in the structure, accountability and focus of the Department of State (hereinafter "DOS") itself as Central Authority. Delegation of their authority to accreditors will only exacerbate the lack of communication and responsiveness of DOS to their true constituency- parents and children. Parents have been denied due process and equal protection by foreign adoption processes approved by DOS. These processes purposely assign children by arbitrary procedures because of corruption. Relinquishments are secured under questionable circumstances that benefit those that identify and place the children. Children have been denied fundamental human rights protections as they are treated like inventory brokered to the highest bidder.

In Georgia, Romania, Guatemala, Cambodia and Vietnam, the Embassies, DOS and agencies all had knowledge of the ongoing corruption but chose to ignore it so long as it remained below the radar of the public eye. Corruption of the adoption process is not unique to the countries where these scandals and suspensions have occurred. It goes on in most sending countries presently and will undoubtedly result in future closures unless the issue of corruption at the point of origin is addressed.

The Hague Treaty, Legislation and Regulations purport to do so. But laws and agreements that merely state they outlaw corruption don't stop corruption. There are many laws, treaties and regulations already in force that forbid corrupt activity in adoptions. They have had little to no effect on the rampant abuse because foreign corruption in adoption is neither investigated nor deterred. Attempts to seek redress or enforcement of those laws encounter insurmountable resistance. As drafted, the regulations will provide only additional un-enforced rules.

The DOS international adoptions brochure states "the Department of State consistently takes a strong stand against fraudulent adoption procedures. This policy flows from our general obligation to respect host country laws, to discourage any illegal activities and to avoid the possibility that a country may prohibit international adoptions entirely." DOS states that the Embassies will "Ensure that U.S. citizens are not discriminated against by foreign authorities or courts."

Secretary Powell has stated "The fight against corruption is a high priority in U.S. foreign policy."

The public declarations stand in sharp contrast to what the DOS and Embassies say privately and do about adoption corruption. Embassy officials state they have no control over foreign adoption procedures. They say they can only engage in diplomatic support of positive change and promotion of a transparent process. BCIS has the authority to deny a visa if the process is found to be fraudulent. But they intervene only in the most flagrant cases of kidnapping or wholesale baby brokering and when it is

complained of in a public forum. Then the reaction is denial of the visa, or complete moratorium, not correction of the corruption or improvement of the process. The Embassies cannot counter corruption without clear, simple, measurable and enforceable guidelines on acceptable adoption practices with financial guidelines and absolute mandates for fair non-discriminatory treatment and limits on provider's power and discretion.

Agencies jealously guard their facilitator information and the means by which they obtain their desirable, "in-demand" referrals. Referrals and assignments of children are governed by private "connections" and "inside government relationships" (in countries where a central authority makes placements), not legal process. Agencies can obtain healthy young babies quickly for their clients if they have these unofficial understandings. In the countries where agencies deal directly with independent directors or children's homes, relationships are established based on which agencies offer them the best deal for their children. Most parents know and consular officers concede that corrupt officials on various levels often require illegal payments for adoptions to succeed. This is despite foreign laws and procedures whereby applicants supposedly receive referrals according to application date or other objective legal criteria. Private deals struck between direct providers of children such as directors and agencies are just that — Private and not subject to scrutiny by Embassy or other US officials.

Complaints to US and foreign authorities fall on deaf ears. Legal procedures do not exist for parents or their representatives to demand their rights in foreign adoptions under US law. Attempting to demand justice from a foreign government is an unpredictable, time consuming, expensive and frustrating endeavor. Corruption extends to courts, heads of departments, oversight committees and executives branch members. Agencies are not required to disclose just how they are able to receive preferential treatment or how they gain access to adoptable children so successfully. The DOS states it can't control foreign corrupt adoption practices. And for whatever reason, it does not attempt to control agency participation in that corruption.

All this occurs in the context of a large "foreign fee" generally over \$10,000, disappearing into a black hole abroad with no breakdown of its disbursement. The proposed regulations will continue this practice. No breakdown is proposed, nor is there any defining criteria determining what constitutes "reasonable" payment for services. The suggestion that non-governmental accreditors can combat corruption in a third world sending nation is wishful thinking.

A behemoth regulatory system with accreditors reviewing written policies, records, complaints and procedures on US soil can not possibly have much of an impact on the issues of foreign corruption and trafficking. The practices and policies that gave rise to the scandals that resulted in shut downs would remain unaffected under the proposed Hague implementation. So long as money flows unaccounted for abroad and preferential treatment and discriminatory practices are tolerated under US oversight, Hague will change nothing.

Referrals obtained through improper influence and "connections" must be expressly prohibited. The DOS must require that the referral process of children be based on fair, legal, objective criteria and then monitor to insure that this takes place. If all applicants are given equal consideration, there will be no incentive to make improper payments to get what is lawfully available. Under the concept of Hague, no adoption should be permitted to be "private" in so far as no private financial deals should enable a parent to "buy" a better adoption direct through an attorney or birthparent that can circumvent equal treatment or due process. More money should not equal a better baby. Regulations must include that any evidence of disparate treatment or fee structure inconsistent with country guidelines will be considered unacceptable. It must constitute a violation of law for an agency, facilitators or representative of an applicant to seek or accept improper favorable treatment. If the federal government is going to take on responsibility for oversight of a federal process, constitutional principles of equal protection and due process must be adhered to. If the only way this can be done is by restricting agency practices to insure fairness, then that is what DOS must do. This will not be a popular decision with the US agencies who benefit from foreign corruption, but the DOS must act consistent with its legal obligations, not appease special interests.

Accreditors must not be related in any way to any existing adoption providers. They must be totally objective and free of conflicts of interest.

Much needed is parental input, communication and recourse. Parents need viable procedures for them to solve problems and make complaints, not merely an administrative scheme that punishes agencies. We need practical cost effective methods to resolve disputes such as mediation and arbitration. Parents must be given a formal voice in the Hague regulatory scheme.

The adoption community needs to make more of an effort to coordinate and enhance opportunities for humanitarian aid development. We need to leverage existing resources and work toward long term goals of education and prevention of the cycle of poverty that creates future generations of orphans.

We need to enter into a cooperative dialogue with the human rights organizations that are critics of international adoptions to find mutual solutions to our common problems. With improved communication and acknowledgement of problems, we can reach a consensus that protects children's rights while still supporting international adoptions.

The regulations are strangely silent on the duties and obligations of the Central Authority itself. If Hague is to be successful, the DOS must fully accept its responsibility to prevent child buying and profiteering by unscrupulous providers. DOS must not see foreign corruption as an issue outside its control. Though it cannot control foreign procedures, it can reign in agency participation in corruption. There must be detailed regulatory guidelines that will indicate when and how DOS will act to carry out its duties not just oversee an accreditation scheme or engage in diplomatic communication without defined mandates. Finally, we need a proactive not reactive Central Authority that embraces its primary responsibilities to children and parents, not adoption providers. The DOS must live up to its expectations for other countries and be "transparent" itself in its dealings with parents and operation in connection with adoptions under Hague.

* the term "agency" herein will refer to both agencies and "persons" as defined under Hague.

Personal Experience of Corruption in Adoption

I write these comments on behalf of parents and children but my knowledge and opinions come from first hand professional experience as an adoption attorney and a licensed adoption provider.

I have been an attorney for 20 years and am a parent of seven including two internationally adopted. I am also an adoptee. My interest in this field of practice is more than professional. I believe that the international adoption industry is out of control and requires a different approach. My goal was to run ethical, cost effective professional adoption programs with emphasis on humanitarian aid. I partnered with foreign Bar Associations to increase accountability and leverage their already existing infrastructure. (Appendix A) I hoped with strong partners committed to children's rights and ethical practice, we could avoid corruption and successfully help parents adopt a better way. The project failed in five countries; thoroughly defeated by corruption in four. (Appendix B) I am trying to complete my last few adoptions and closing the project but am having substantial problems even doing that as of the time of this paper's submission.

What I have discovered as an "insider" has been quite revealing. Corruption is far more pervasive than I expected. In one country after another I encountered problems that repeatedly left me with the choice of engaging in unethical or illegal activities in order to conduct adoptions or withdraw from a country or region altogether. This was not because the project wasn't financially viable or because of other practical obstacles. I was unable to assist my clients to adopt without engaging in illegal or unethical practices in order to compete. I chose to walk away.

I encountered predatory conduct on the part of other agency personnel to keep me out of "their territory". I discovered that officials would not give assignments of children that weren't working with the "right" people with an "understanding" of how things were done. Laws are meaningless and everyone knows and accepts it. Facilitators can "own" children's referrals regardless of their best interests and will hold them indefinitely rather than allow them to be adopted as soon as possible through someone else and lose fees.

Some countries' processes are confounded with conflicts of interest by persons in positions of authority grossly abusing their positions and profiting from the placement of children in their charge. Directors of orphanages requested additional donations beyond our typical donation in connection with an adoption, supposedly with no strings attached but then stopped communicating once they knew we couldn't or wouldn't come up with additional donations. Others gave referrals based on payment of "legal fees" and "donations" for the children but the lawyer didn't exist and the children didn't benefit from the donations. Adoptions were threatened if additional money and/or favors weren't provided. Partners broke contracts and dropped my clients when I refused to make illicit deposits into bank accounts. Government officials retaliated for complaints and attempts to assert legal rights. Orphanage directors threatened to withdraw children from other parents if illegal practices were complained of.

Discovering that the foreign processes were so corrupt was disappointing. But far more distressing was the lack of either surprise or response on the part of US adoption officials. Only after extensive complaints to Congress members and a barrage of letters to every conceivable level in the Department of State were complaints acted upon. Even then, action under pressure was only discrete diplomatic inquiries. I received broad denials of my allegations at

higher levels. In other instances all communication ceased. At no time was there any attempt to prohibit unfair agency practices or consider holding accountable those parties who engaged in improper relationships to get favorable treatment not available to my clients.

Hague is a response to Corruption

Hague came into being due to recognition of baby buying, payoffs of officials, and the treatment of children as commodities in the multi-million dollar adoption industry. The International Community recognized that when money is tied to the assignment of a child, there is temptation to exploit children as profitable merchandise rather than place them in their best interests. But the very nature of baby brokering is hidden and difficult to prove. Receipts and statements acknowledging the existence of bribes, aren't given by the participants. So until someone makes the risky decision to report pay-offs to law enforcement or the media investigates, corruption thrives because it is highly profitable.

Nationals who wish to adopt can't because their authorities and attorneys will select US applicants paying high fees over local citizens who are entitled to adopt for free or very little. Officials give the assignments to high paying foreign applicants over domestic. It fuels rumors of adoptions really being the buying of children for body parts or other despicable purposes. It invites participation by dishonest practitioners and organized crime. It blurs lines between legitimate placements and trafficking for sexual purposes. It induces local citizens to view it as the same thing. It contributes greatly to outrageous escalating fees. Corruption is not a victimless crime.

Corruption causes numerous problems and happens in various ways depending on the type of system in place. When a country adopts out children via a central referral process, facilitators can attempt to buy advantageous treatment direct from the Central Authority. Problems can be worse when direct adoptions from birthmothers allow private attorneys to place children. It can be difficult to ascertain whether the child was bought or traded. Few birthmothers report payments they have accepted because they fear legal sanctions. Occasionally, some do after regretting their decisions. Birth parents have reported intimidation when they changed their minds soon after relinquishment. Some birth parents have misunderstood or been lied to about the permanency of the placement.

When children are adopted directly from orphanages, the directors can demand "donations" that allow them to drive Mercedes while their charges sleep in unheated rooms. The more generous the mandated donation, the faster and more desirable the child. Orphanage officials also work on the side as facilitators for certain private agencies to the exclusion of others. The conflict of interest is ignored by officials.

In some systems, children are listed as "abandoned" but are delivered to waiting parents by their own birthparents pretending to be a caregiver. They are told they can expect a generous "gift" from the adoptive parents for caring for their adoptive child. Occasionally, older children tell adoptive parents that they were adopted directly out of their birth homes, not an orphanage as reported, to the adoptive parents once they can speak English. In the worst case scenario, greed prompts the kidnapping of babies for sale to facilitators, directors or lawyers who are known to pay for referrals. In all of this the common denominator is profit for those conducting the adoptions. Vast sums, often many years salaries for each child adopted, changes hands under the guise of being payment for services.

Adoption agencies are among the first ones to admit that "who you know" and having "the right connections" with officials, etc. is how an agency succeeds. Many justifications are given. "We cannot impose our cultural and moral values on countries where corruption is way of life"; "These officials need to make a little money on the side too", "The end justifies the means where children are concerned" and more honestly "It's the only way to survive in this business".

The US Government recognizes corruption is ongoing in adoptions

The DOS and Embassies concede that payoffs are commonplace and are often necessary in order to successfully complete an adoption. US officials report that the corruption results from impoverished foreign bureaucracies barely paying the adoption workers and others who process related paperwork. Foreign law, not US law governs the sending countries procedure even though it must also satisfy US immigration law. Consular officials say they cannot intervene in a foreign legal procedure. A DOS official reported that they balance the competing interests and pressure of diplomatic relations, desperate parents and agencies' business interests against a foreign rule of law that is difficult to enforce. They state they encourage and support positive transparent change.

Laws Already Prohibit Corruption in International Transactions

The United States has signed, and other countries have ratified, the UN Convention on the Rights of the Child: Article 21 states *"parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:*

... (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it"

The US has ratified the Optional Protocol on the sale of children, child prostitution and child pornography. Under it: *"States Parties shall prohibit the sale of children."* It defines the *"(a) Sale of children [as] any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;"*

The FCPA prohibits *"paying, offering, promising to pay (or authorizing to pay or offer) money or anything of value."* This applies to both direct incentives as well as through intermediaries.

Under Title 8 Aliens and Nationality Immigration Service Section 204.3 (i) regarding orphan visas:

"Child-buying as a grounds for denial. An orphan petition must be denied under this section if the prospective adoptive parents or adoptive parent(s), or a person or entity working on their behalf, have given or will give money or other consideration either directly or indirectly to the child's parent(s), agent(s), other individual(s) or entity as payment for the child or as an inducement to release the child. Nothing in this paragraph shall be regarded as precluding reasonable payment for necessary activities such as administrative, court, legal, translation, and/or medical services related to the adoption proceedings."

Under provision 204.3(k)(1), *"An I-604 investigation must be completed in every orphan case.... In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate service office for action. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but not necessarily be limited to,*

document checks, telephonic checks, interviews with the natural parent(s) and/or a field investigation."

Under provision 204.3(k) 2, "A consular officer, however, shall refer any petition that is 'not clearly approvable' for a decision by the Service office having jurisdiction pursuant to Section 100.4(b) of this chapter."

A field investigation should take place due to suspicions of fraud and corruption pursuant to 8 CFR 103 et seq. Failure of the Consular Officer to do so could give rise to liability under 22 U.S.C. 1199, 2658 and 3926.

Adoption providers that benefit from unfair advantage over other providers by their clandestine "understandings" with officials are also violating antitrust laws, engaging in unfair business practices and other tortious conduct. They violate the constitution's equal protection clause and human rights provisions. Article 24 of the American convention on Human Rights states: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law." Adoptive parents are entitled to all these protections under the law. Yet no one has expectations that agencies and facilitators will abide by the law.

Though bribery and corruption are illegal, obtaining direct proof of it is difficult. Participants in corrupt practices do not give receipts, written confessions or make verbal admissions to authorities to provide evidence of it.

Many countries are signatories to the Council of Europe Civil and Criminal Convention on Corruption. The US has ratified it. The Civil Convention states:

"Corruption is, by its nature, secretive and plaintiffs may encounter great difficulty in obtaining the evidence required to substantiate their claim. There are various methods of meeting this difficulty. For example, certain legal systems provide for an application to court for an order for discovery, while in other legal systems a judge can appoint a specific person to obtain the information required."

The Criminal Convention states:

"This provision [23] acknowledges the difficulties that exist to obtain evidence that may lead to the prosecution and punishment of persons having committed those corruption offenses defined in accordance with the present Convention. Behind almost every corruption offense lies a pact of silence between the person who pays the bribe and the person who receives it. In normal circumstances none of them will have any interest in disclosing the existence or the modalities of the corrupt agreement concluded between them." It encourages "the development of tools and procedure to investigate the corruption since it will not generally be immediately available to those victimized by the actions."

International adoption corruption is beyond the investigative boundaries of most US law enforcement's reach. Agencies with worldwide jurisdiction such as FBI and INTERPOL consider these cases to be far too small to investigate or prosecute. An average adoption corruption case might involve foreign fees of less than \$ 10,000. Therefore they feel that limited resources are better spent on cases that involve millions of dollars and/or violent crimes. Even where there is investigative interest, jurisdictional thresholds eliminate most cases from consideration by the US Justice Department and US Attorney's Office. Generally, evidence of adoption corruption will only be circumstantial. Facilitators and corrupt officials are discrete. Parents who discover improprieties are afraid to implicate their own adoption. Making evidence of bribery the only standard by which corruption is judged, guarantees it will never be proven.

Civil remedies available to an individual are very limited. Bringing a private cause of action isn't realistic. The litigation would cost more than the adoption. Even if there's adequate evidence, attorneys generally seek far more lucrative cases to accept. Currently, Hague creates new laws that will be equally unenforceable for parents. That leaves only the Hague accreditors sanctions against an agency. An administrative sanction upon an agency is small comfort to a parent who has lost a child, \$35,000, and has no money or emotional energy left for litigation.

US Policy

The US government acknowledges the importance of ending corruption in international transactions. The Department of State brochure on corruption states:

"The fight against corruption is a high priority in U.S. foreign policy. The United States has taken a leadership position in combating overseas commercial bribery beginning with the enactment in 1977 of the Foreign Corrupt Practices Act, and more recently, with the Organization for Economic Cooperation and Development Bribery Convention, and the Inter-American Convention Against Corruption.... business and government can work together to combat the problem of corruption and enhance transparency."

During his remarks on "Fighting Global Corruption: Business Risk Management" May 2001 Secretary Colin L. Powell said:

"As we enter the 21st Century, more people throughout the world are rejecting the notion that corruption is inevitable. Success depends on impartial democratic institutions, open elections, and an unfettered access to information. Success also requires leadership by the private sector and active participation by citizens. Promoting integrity in government and the marketplace improves the global governance climate, nurtures long-term growth, and extends the benefits of prosperity to all people."

The Secretary additionally stated *"Corruption and unethical behavior by public officials are serious threats to basic principles of democratic government, undermine public confidence in democracy and threaten the rule of law.... [C]orruption flourishes when democratic institutions are weak, laws are not enforced, political will is lacking, and when citizens and the media are not allowed to be partners in democracy."*

Department of State asserts this viewpoint should be extended to international adoptions because of widespread abuses. Their International Adoptions Brochure states:

"International adoptions have become a lucrative business because of the huge demand for adoptable children. The combination of people motivated by personal gain and parents desperate to adopt a child under any circumstances, creates the potential for fraudulent adoptions... In the international area, the Department of State consistently takes a strong stand against fraudulent adoption procedures. This policy flows from our general obligation to respect host country laws, to discourage any illegal activities and to avoid the possibility that a country may prohibit international adoptions entirely. The Department of State has unfailingly expressed its support for measures taken by foreign states to reduce adoption abuses."

The international adoptions brochure from the Office of Children's Issues says DOS takes:
"A strong stand against fraudulent adoption practices"

Embassies will

"Ensure that U.S. citizens are not discriminated against by foreign authorities or courts."

Our government states that it considers the elimination of international corruption "of the highest priority". The US has been promoter of multiple worldwide treaties, extensive reform efforts, foreign aid and education. These efforts are designed to stamp out corruption and the detrimental impact it has on world trade and governance. So strong is this commitment that our government spends BILLIONS of dollars to support rule of law, democratic governance, promotion of anti-corruption treaties and diplomacy to convince foreign governments to create a "level playing field" for financial transactions.

These initiatives however, do not extend to international adoptions. There has not been a single program to address problems of adoption corruption and illegal influence despite the notoriety of the problem.

This disconnect extends to their reactions to complaints of ongoing corruption to the DOS Office of Children's Issues. After writing MANY letters to the DOS higher-ups of complaint concerning rampant corruption in a country whereby my clients were denied their rights, I finally received this response

"Your letters indicate that you believe that the State Department and US Embassy Officials do not take allegations of corruption in other countries seriously. That is simply not true. The Department abhors fraudulent adoption procedures and the harm they cause children and families. We proactively and persistently encourage foreign states to take concrete measures to eliminate adoption abuses. Consular officers at US Embassies abroad frequently meet with foreign government officials to seek explanation of questionable practices, state our concerns, and advocate responsible policies to protect the rights of children, birth families, and adoptive parents involved in adoptions"

Even if this were the case, (which I would contend it is not) this isn't having the desired effect. Rarely a day goes by that another story doesn't appear in publication decrying yet another corrupt adoption process uncovered or another victim of the process hurt. These disclosures are NEVER by our own authorities. No measures have been undertaken to control these problems by action against agencies or screening of practices. Ask any Congress member how many parents come to them because they cannot get a response to problems and concerns from BCIS or DOS. They should not need to apply pressure to get the Department to listen.

Hague Regulations are Agency Oriented

The drafters reported their efforts to take into considerations the "competing interests of the adoption community". The drafters definition of the "adoption community" was very weighed toward agency interests because that was who primarily advised DOS and the drafters - those who stand to profit the most from adoptions. They did solicit input from everyone but received very little from non-agency interests. While parents may have their own experiences to share, they will generally have no comprehensive understanding of the broad legal and ethical issues under consideration. They are not legislators or policy experts and so did not have the same ability to comment as those with professional interest. As one of the primary intended beneficiaries under Hague, their interests must be protected by the State.

The drafters' preface to the latest proposed regulations says "one of the most challenging issues facing the Department was how comprehensive and stringent these standards should be, bearing in mind the desirability of minimizing the cost and burden on agencies and persons, especially on small entities.....without unduly changing the adoption community's current structure".

This has been symptomatic of the entire approach to Hague implementation. It was developed not from the starting point of what will protect children and families but from maintaining a pre-existing system that brought us the disasters in Cambodia, Romania, Vietnam, Guatemala and Georgia as well as \$35,000 adoptions.

The application parameters for accreditors were also crafted to all but guarantee that the current voluntary accreditors (who set the standards for prior practices of many agencies) will be named as the official accreditors under Hague. Once again, the bias was toward preserving the current system.

Maintaining the Status Quo is not the Purpose of Hague

The focus during the process, has been on the regulatory framework instead of the critical components of the best interests of children and the adoption process itself. Acton Burnell have twisted themselves inside out attempting to both comply with Hague and also maintain and support the "current adoption system". These are incompatible goals. With the exception of the much needed consumer protection provisions that make agencies accountable and liable for fraud, the regulations are primarily about a sub-bureaucracy of accrediting agencies for monitoring adoption so as to make the present adoption system Hague compliant. The priority of Hague should be the integrity of adoptions.

European international adopters can generally adopt for half the cost of Americans. It is our US agencies that enabled foreign officials to take illegal payments for granted. Under this system, adoption costs have skyrocketed.

Has the existing structure served so well that it should be preserved at all costs?

Independent Adoptions Must be Protected

Independent or parent initiated adoption is specifically permitted under Hague. Parents can save considerable amounts of money by applying to the central authority themselves where foreign laws allow this. But too often independent adopters have difficulty getting an appropriate referral. The children will be assigned unofficially to the agency with "good relations" in the region. Independent adopters in some countries may be at a disadvantage compared to adopters represented by "connected" agencies.

The role of the Central Authority includes

"...monitoring and facilitating individual cases involving U.S. citizens".

This language indicates that it is incumbent upon the Central Authority to assist individual adopters. If foreign law permits independent adoptions then the Central Authority must assure that independent applicants receive the same consideration as those represented by an agency.

The Role of the Central Authority

Article 8

"Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention."

Much attention and detail has been paid to the functions, responsibilities and rules concerning accreditors and agencies. Missing is elaboration about the role and responsibilities of the Central Authority itself toward adoptive parents.

The regulations need to delineate the duties of the Central Authority and under what circumstances and how it will intervene in the process when problems arise beyond the accreditation scheme. Under Hague, the Central Authority is charged with communication with foreign governments concerning adoptions. The DOS and Embassies already serve in this capacity and will continue to do so even in non-Hague countries. They will still not have direct jurisdiction over foreign officials' actions. They will still be unable to enforce foreign laws any more than they are now.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

The buzz word of this process has been "transparency". The DOS talks of the goal of this as part of Hague, the lack of this as a problem in foreign countries. Absent is any plan to make the DOS's procedures more transparent. The operation of the Central Authority itself must be consumer friendly and approachable. Parents should feel that the Central Authority is there to support them not oppose them.

The Embassies and DOS must mandate equal protection and due process for all adopters. A lawful and rational basis for referrals to applicants must be ascertained in each country. Written policies and procedures must be fixed and adhered to for the process to be considered lawful. Variable, vague or arbitrary methods of processing applicants must be prohibited. The Central Authority must develop a mechanism to monitor adoptions for trends of preferential treatment and discriminatory assignments of children. Unusual unexplained numbers or patterns of relinquishments occurring with any particular provider must be considered evidence of corruption or baby buying. The regulations must prohibit any provider from accepting or even seeking improper preferential treatment that results in an increase in business, fees or other advantages.

For Hague's implementation to be constitutional, adoptions MUST guarantee equal protection and due process for all applicants. The absence of these provisions will only bring about legal challenges to it and continued corruption. Any adopter complaining of discriminatory treatment must be entitled to Central Authority intervention and assistance.

Fees

The draft attempts to solve the problem of corruption and trafficking in Section 96.36 prohibiting child buying. Already explained was why a legal prohibition alone is not effective. This lack of "teeth" is compounded by Section 96.40 which allows lump sum fees for the foreign fee. Without a breakdown, no one, not parent, Central Authority or accreditor, knows where that money is going. This invites the use of money to gain competitive advantage by using a portion of it to secure favorable treatment by officials or influence the availability of children.

There must be mandatory disclosure of fees with the information recorded and tracked by the Central Authority in order to watch for abuses. Only an Embassy can evaluate if it is

unreasonable for a facilitator to claim it took 20 hours of work and 30 in transportation to obtain a new birth certificate or adoption decree. If the town is 12 hours away and the process involves unusual difficulty, it might. An accreditor could not determine if such a charge was reasonable or not or it reflected an unusually high charge. Deviations from typical fees might only be noticed by someone regularly following and knowledgeable about adoption practices in specific regions. The fee can only be evaluated provided it is specifically broken down to reflect payments for each activity.

Every person associated with an adoption that is paid must be named. Their function and title (profession) should be listed as well as their hourly rate of pay. Breakdown of types of charges should list specific activities performed, such as legal work, translation, interpretation, transportation (if provided), escort for adoption matters, assistance with accommodations, obtaining documents, drafting documents, court appearance, Ministry liaison, obtaining medical records, assistance obtaining relinquishments and history, or filing papers with a regional or federal data bank, liaison with orphanage, birth certificate, visa assistance, medical exam for child.

Who the child providers (orphanage directors, Ministries, Attorneys of Birthmothers, or other Child Welfare Officials) choose to work with (preferred agency, other attorney or individual adoptive parent) requires monitoring. Detection of preferential treatment or discrimination against some applicants or agencies, could only be noted by someone monitoring that country or region. Children must be made available for adoption according to laws and fixed procedures. Arbitrary, unofficial or undisclosed standards and decisions that change according to applicants or agency, must be actively rejected by the Central authority. If all applicants are assured they will be considered equally regardless of their "connections", there will be no need for anyone to engage in corruption to obtain a child referral.

Fundamental to protecting children's rights is the Hague Convention prohibition against *"improper financial or other gain from an activity related to an intercountry adoption"*

Article 4 of the convention requires that authorities have *"given their consents freely"* and ... (3) *the consents have not been induced by payment or compensation of any kind* and Article 24- *"Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid."*

This raises the same problems already occurring with the absence of concrete proof of illegal payments. Other indicators of corruption must be prohibited, guarded against and investigated because of the difficulty of proving bribery and child buying. Under Article 24

"The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child. ...

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered."

"Reasonable" fees will vary but in a third world nation they are far different than in the US. International adoptions occur because of profound and pervasive poverty in that country.

Every foreign fee presently is "unreasonable" on its face because in a lump sum it usually constitutes many times the annual salary of the average person in that country. Facilitators are "rich" in these countries where often the annual income is \$500. Current typical payments

for foreign fees are far out of proportion to work performed. How could anyone justify 20 years salary for two weeks work?

Breaking down foreign fees though, will not be enough to prevent corruption. Even if specifically itemized by hourly rate, agencies might still charge excessive and unreasonable fees and claim compliance. One agency may charge their clients \$100 per hour for 100 hours of legal work to facilitate an adoption. Another may charge the typical local rate of \$10 per hour. Both may provide the exact same services in the same manner. Agencies could defend this with the explanation that their legal providers are better qualified. Then, if they are given advantages by the sending country's adoption officials or somehow have many babies relinquished into their care for adoption they can say that the country's central authority prefers to work with better qualified providers.

Fees must be evaluated according to the country's economy and capped at a realistic sum for all providers. A comprehensive fee schedule might be developed. For example, in the New York State Law Guardian system all attorneys are paid a fixed hourly rate and have limitations on the amount of hours they may put in for. They must apply to the court for an extension of those hours if the case requires more time for a particular task than is typical. If they wish to work in this capacity they must agree to regular training and a code of conduct and work under the set fee structure. They are only allowed to submit a certain number of billable hours without application to the court for an exception for an extraordinary case.

All parents, facilitators, agency personnel and others must report in a sworn statement how much money they received or paid per adoption. They must declare they have not paid anything to any officials or disclose any legitimate payments. Such statements should be required before the child receives a visa or other US approval of the process and kept as a permanent part of the adoption file. These amounts should be reviewed, recorded and tracked by Embassy officials or DOS in order to detect any deviations from norms or indications of improper expenditures in the process. Only with the combination of fee limits and monitoring, mandatory equal protection and involvement of the Central Authority, can corruption be effectively opposed.

Parents' Interests are not protected by the Proposed Regulations

The current regulations will help improve adoption in some respects from a consumer's view but the cost of implementation will also be hefty. Parents will have the right to press for sanctions against providers, but the regulations don't create redress for harm done to them. Despite new protection to speak out against their providers without retribution, parents only recourse against providers on their own behalf will still only be costly litigation. For all but the most serious cases of misrepresentation, fraud and "wrongful adoption" there will be no means for parents to recoup losses or collect damages.

For the vast majority of disagreements there should be a mechanism, independent from the accrediting system, to negotiate problems in lieu of or before litigation or filing administrative complaints. There should be a system developed that will help parents having difficulty communicating with their providers in an informal manner that is supportive and not confrontational. A formal mediation process could be made available for more difficult issues that are not resolved through informal methods. Simple available interventions early in the process of disagreements would prevent costly investigations, paperwork and hearings by

accreditors as well as empower parents. Arbitration should be an available remedy to consumers in cases where the sum in dispute renders litigation an unrealistic option against an agency. This would give parents access to a remedy that would support justice without high costs for either parents or agencies.

Hague adoption law will be understood by agencies as a matter of necessity in order to obtain accreditation. But parents will have no such sophisticated understanding of their new rights, obligations or limitations of the new laws. They will have no source of education or interpretation of these laws. They will once again have to take the agencies word for their rights in the absence of an entity to make this information known and to answer questions and advise parents when they are unsure of the law.

An independent entity should be created to educate and advise parents, monitor complaints and trends so as to recognize emerging issues and address them before they become widespread and entrenched. This entity would report these issues and patterns to the Central Authority and act as a liaison to it on behalf of parents. This entity could also act as a central depository for legal research, advocacy information, trends and statistics that are of specific interest and benefit to PARENTS and CHILDREN not providers. This organization could assist accreditors and DOS in developing standards, best practices and adoption education from the viewpoint of the family not just professionals. Just as agencies can turn to their voluntary organizations for support and information, this entity could act as the primary support and referral source for families. It must be officially recognized as are accreditors and agencies by the Central Authority to give parents a formal voice in the adoption community.

A similar suggestion was made by the Evan B Donaldson Foundation but was not included in the draft. Parents have been grossly underrepresented in the international adoption community historically.

Humanitarian aid

As world citizens we need to recognize that all children are "our children". Central to adoption practice must be a firm and absolute commitment to assist the children who remain un-adopted and disadvantaged. We need to support efforts to keep children in their homelands. We must give aid that goes beyond maintenance for today and creates a better tomorrow. Donations must get to the intended beneficiaries. Monitoring for abuses and diversion of funds and materials must be included in any humanitarian aid project. The adoption community must become less competitive in this work and create assistance plans that create a whole greater than the sum of its parts. Combining resources and aiming at longer term goals than providing vitamins and diapers will give children a chance at a better future.

Children sustain serious permanent damage from early deprivation. This is one reason why private birthmother adoptions are sought by parents. But these programs are at higher risk for abuses and those abuses can be worse than those with a central authority system. The need for DNA testing in Guatemala is an example of the problems this less regulated system brings. By supporting a system that allows Nationals to adopt early on, there is less need for lengthy registry times. Central Registry systems are less vulnerable to abuses.

Most Nationals seek newborns. Longer waiting times probably do not result in many more Nationals adopting. If the system will truly support Nationals to adopt (rather than prevent them from doing so because of financial preferences for international adopters), then the need to drag out the waiting time before foreign citizens are eligible. Registry time could be shortened to

a healthier length of not longer than three months. This would benefit children's development greatly. Every effort should be made to allow children in a home as early as possible.

Hague regulations must also create an office, entity or task force that will support humanitarian efforts, assist in prevention of pilferage and offer adopters a way to give back to their children's birth land. By pooling resources, sharing expertise and working in unity, parents, agencies and our government can bring more meaningful benefits that are consistent with the true spirit of Hague to children. As the country that does the majority of adoptions in the world, we must act in a leadership role and show countries we want to do much more than merely take their children to our homes. By doing so we will take their children into our hearts.

Beyond Hague

While Hague will implement legal change in adoption as part of its process, most of the basic concepts presented herein are generally applicable to all adoptions. Many countries are not now Hague signatories and even those that are may not implement it for some time. The United States is struggling to design and implement a workable scheme in a timely manner itself. We cannot permit illegal and unethical adoption practices to continue until implementation is complete.

The need to eliminate corruption is universal and pertains to all countries that permit adoption. The constitutional principles guaranteeing all applicants due process and equal protection should pertain to all adoptions, Hague or not. These are fundamental cornerstones of law that are embraced under the constitutions of nearly all countries including emerging democracies.

The DOS presides over a US sanctioned legal process in its oversight and approval of international adoptions. The recognition of the citizenship of its children by automatic operation of law under statute or by an immigration process is its legal approval of the foreign process. It is not a removed bystander in this process with no rights or obligation to demand legality. As such, it must comply with our own constitutional mandates as well as foreign law. The United States government has both the right and obligation to demand from all sending countries an objective and lawful adoption process free of corruption and unconstitutional treatment. They must not approve or accept anything less on behalf of its citizens regardless of whether the countries are parties to Hague or not.

The DOS must mandate a lawful adoption process in all countries without exception, where it permits and approves any international adoptions.

Accreditors Must Be Objective

All accrediting entities must be independent and unrelated in any manner to other adoption related entities. All accreditors or applicants to be an accrediting entity must establish that they are free of any conflict of interests. The integrity of the system requires that directors, employees and board members of any accrediting entity have no economic or any other ties to directors, employees or boards of any entities providing any type of adoption related services whether they are accredited or not and whether they are doing so in Hague member countries or elsewhere.

The Strongest Solution is Assuring Equal Consideration of all Applicants

In the course of attempting to conduct adoptions, I have had some interesting conversations with Consular Officers. These public servants are put in missions and expected to comply with "policy" goals of the US but with very limited resources. They are advised that their duty under law with respect to adoptions is to screen each adoption for BCIS to assure they are "orphans" under the current legal definition- no more than that. They aren't even looking at the foreign process. This is significant in so far as some current legislative proposals are being suggested that will eliminate even this minimal scrutiny. While it is important to prevent the situation where a parent has adopted and then cannot get a visa, it is important that there be screening at some point in the process for trafficking.

The Embassy Officials do not create the standards or issue the lofty rhetoric of DOS that the US vigorously opposes adoption fraud. They are posted in countries where law and order are not a given. Then they are charged with making a finding of legality in adoptions. They view their job as to see to it adoptions pass a "sniff test" before issuing a visa. They contend it is parents who, because as they put it, "the demand is greater than the supply" have created an atmosphere ripe for bidding. As one consular officer put it "it is not entirely the fault of the foreign governments, our (US) families come and create the demand and we must accept our part in this". I take this to mean that US parents will pay what they think they must to bring a baby home, it is not just foreign officials failed oversight or corruption that brings about a flawed process that is negotiable for the "right price". My position would be that it is more the fault of their adoption providers who make these supply side economic decisions for their clients in order to compete. These consular officials are left with an awareness that the process is very corrupt but the expectation on the part of both the naive and idealistic, that the US government oversees the process of international adoption and therefore we can rest assure it is lawful.

These inconsistencies must be addressed now under Hague or they will never be. The only way to stop this is to make it impossible. All opportunities to hide corrupt practices amid large foreign fees and favorable treatment must be taken away. The flood of corruption cannot be stopped by the Embassies without proper tools and resources to do so. They alone, cannot and will not enforce international law, eliminate corruption and make adoption an honorable activity again. They can, more realistically, assure that strong specific laws and restrictions on behavior are complied with. They must have a specific framework, that eliminates potential for corruption, to enforce. They cannot go out and root out corruption in the foreign countries.

The difficulties of detection and prosecution of bribery and improper influence in foreign countries requires a more practical solution to the problem of corruption. It is clear that an accreditation system is better suited to the management of standards, record keeping and disciplinary actions against agencies than combating corruption. Regulation and capping of fees will be essential but may still allow "connections" and surreptitious deals to take place. Determining "reasonable" payment for adoption work will be complex, particular to the local economy and subject to disagreement.

The simplest and most complete way to eliminate corruption is consistent with universal constitutional principles is to assure due process and equal protection for all adoptive applicants. Providing a fair process will require monitoring of providers by the Central Authority and being vigilant for signs of improper procurement of children (such as suspicious numbers of children being placed through specific providers absent legitimate explanation). It will also require the Central Authority to establish up front, a rational, transparent, objective and

consistent system of making referrals of children. This eliminates the incentive for paying for favorable treatment to get access to children. By forbidding disparate treatment thereby assuring due process and equal access to adoptions, many other issues are eliminated. This role must be embraced by an involved Central Authority that is not restricted to maintaining current systems whereby many agencies have found success and profit. Only a multi-pronged approach will defeat corruption. No one measure will suffice. And only the DOS has the power to effect this change.

All focus by Embassies and DOS has been on the LIMITS of their authority to change foreign procedures. There is never any focus on amending or limiting the improper practices of agencies participating in the corruption for economic advantage. There seems to be a generalized blindness by the Department to the provider participation as though they are powerless to just say no to corruption. If any one current agency stopped their corrupt engagements they would be out of business due to the competitive advantage of others. But if ALL agencies were prevented from participating then ALL agencies would find themselves on that "level playing field" that the Department recognizes as so desirable.

Fundamental human rights require that children not be sold or their placement determined by anything but their best interests. DOS needs to maintain this issue in the forefront of adoption practice by establishing a task force or office to examine and monitor human rights issues in relation to international adoption. The tendency in the past has been for the adoption community to interpret criticisms of adoption practices by international human rights organizations as being "anti-adoption" when they may well be "anti-corruption in adoption". The adoption community needs to listen and enter into a dialogue with these organizations. By considering valid concerns in a collaborative setting, we may find common ground in divisive issues. The beginning of Hague implementation is the perfect place and time to begin such a cooperative relationship in order to best protect the interests of children and improve adoptions.

The choice of agencies should be based on the ability of a provider to give prompt, professional, honest and reliable support during both preparation and the adoption process abroad. It should not be based on the ability to secure the "best baby" ahead of other agencies less "connected". If we continue to allow this we violate both the basic human rights and best interests of children. Money should not equal success in adoption.

As Americans with access to far more money than those in the countries we adopt from, we need to exercise our financial strength judiciously. We need to move the adoption process toward the support of ALL children who need homes not just giving "our own" child one. We need to direct adoption financial proceeds toward humanitarian aid that will create futures for children otherwise doomed to the cycle of poverty that put them in orphanages to begin with.

We need to decide if Hague is to be the turning point in a deteriorating adoption system or a band-aid designed to satisfy special interests.

Constitutional protections, common sense monitoring and capping fees will go a long way toward curbing corruption and fulfilling the ideals of Hague.

By implementing these approaches to adoption, the United States will demonstrate our commitment to the "the best interests of ALL children".

Summary of Proposed Changes to the Regulations

Equal Protection and Due Process

The DOS in its role as Central Authority shall assure that no applicant or service provider is discriminated against unfairly. The Central Authority will review another country's adoption procedures for clear objective criteria for applicants. It shall monitor the process to assure due process and equal protection for all applicants.

Upon complaint of violation of these rights it shall intervene to assure applicants are afforded all their legal protections.

No applicant or service provider may seek or accept any favorable treatment that provides any advantages over other providers or adopters throughout the process on the other country unless:

1. the provider is given preference pursuant to a legal procedural or administrative policy based on licensing, authorization or other special status under that country's laws that is available on an objective basis to all other accredited agencies
2. done pursuant to a uniform policy that gives preference to providers based on clearly established considerations and measurable standards under their laws or administrative policies. (eg., registration requirements, the provision of post placement reports) that impact the providers ability to act in the best interest of the children, and comply with the sending country's foreign law such as provision of post placement reports or other assurances of the well being of adopted children

Agencies that have complied with all laws and policies may be given preferential treatment over those who have violated policies or failed to meet written objective standards.

Arranging or procuring unfair advantageous treatment from another country's central authority by an agency will be considered a violation of regulations and may result in debarment or other accrediting sanctions even without evidence of illicit or improper payments. Parents shall be entitled to assistance from the Central Authority in the event that they are discriminated against during the adoption process or are denied due process.

Fees

All fees for adoption services must be specifically itemized to reflect the nature and duration of all work done. The name, title, hourly rate and capacity of each worker shall be noted. Fees shall be capped according to the local economy with oversight by the Central Authority (or local Embassy). Unreasonable or excessive fees will mandate an inquiry into the reason therefor.

All parents and adoption providers receiving any compensation must submit to the central authority (or local Embassy) a sworn statement itemizing all fees and expenses paid or received as part of the adoption. Any falsification of information shall be a violation of the Hague regulations and will affect accreditation as well as other applicable criminal laws against perjury.

Parent representation

An office of Parent Advocacy shall be established to assist parents in their adoptions by giving advice support and acting as a liaison to the Central Authority. This office shall be recognized as an official body under the Hague regulations with standing to file requests, ask questions and give opinions under the Hague scheme. It will be included in any communications, announcements and decision making that involves other participants in the adoption regulatory plan. It shall be permitted to represent parents interests generally and specific cases to accreditors, agencies and the central Authority as appropriate or as requested.

The office shall be funded under the budget of the Central Authority but act completely independent of the Central Authority. It will represent the interests of parents and children exclusively, not the Central Authority or agency or accreditors interests.

The office will act as a central depository for educational and and legal information for parents and make public information and developments of a legal, political or procedural nature that may be relevant to parents

The Office shall maintain a listing of referral resources for parents including adoption professionals, legal consultants, parent support groups and medical resources

The Office will monitor issues and trends that may require action or reporting to the Central Authority.

The Office shall offer an informal assistance to aid in communication with agencies when problems arise that need intervention to solve.

The Office shall arrange and offer a formal mediation process to agencies and applicants that are unable to resolve conflicts through the above indicated informal process

Arbitration

A completely independent binding arbitration process shall be mandatory for disputes and claims valued under \$35,000 unless opted out in the contract.

Accreditor Objectivity

All accreditors must be independent and free of any ties or conflicts of interests with any adoption related entities of any kind. This extends to common ties of Directors, Employees, Board members or anyone with any economic interests in either entity.

Humanitarian Aid Office

The Central Authority shall assemble a task force or create an office to research, evaluate and suggest improvements and develop programs to coordinate and improve humanitarian aid to children as a part of adoption programs. No agency or applicant shall be mandated to participate or contribute to this effort.

Humanitarian Aid

The Central Authority will, in collaboration with other Central Authorities, oversee and assist in the management and oversight of any donations mandated by a country's adoption program if requested by the other Central Authority.

Human Rights

The Central Authority shall create an office or task force to examine and monitor the issues of Human Rights as they relate to adoption. It shall collect data and expert reports and make consistent efforts to promote improvements in adoption practices to protect children's rights.

APPENDIX A

Graham's Gift Children's Foundation (GGCF) was formed as a demonstration pilot adoption project. It was designed as a substantially different approach to international adoption. As an attorney and adoptive parent I saw the need for an alternative to the business as usual in international adoptions. The project revolved around several underlying concepts both proven and new.

1. Foreign adoptions could be most cost effectively and professionally be conducted by bar association groups with a demonstrated commitment to human rights NOT unlicensed facilitators. With GROUPS of attorneys corruption could be minimized with mutual oversight and preexisting business support leveraged. Adoption is a legal issue. Lawyers are suitable providers in conjunction with social workers and translators abroad.
2. Excessive money is being paid for foreign services and not accounted for. It is generally acknowledged and accepted that adoption is rife with corruption though the extent is not clear. Adoption fees must be entirely transparent to eliminate corruption. If all funds are accounted for it is difficult to find excess money to split or use for improper pay offs.
3. Adoptive parents and agencies should support the orphans who remain behind un-adopted in the country without opportunities for a productive adult life. Educational interventions at critical times in orphans lives prevents the cycle of poverty that creates future generations of orphans.

GGCF made agreements with Bar Association groups to facilitate adoptions of children already relinquished and housed in orphanages (not private adoptions directly from birthmothers which we categorically oppose in international adoption). All partners were chosen based not just on their professional status but on their stated commitment to human rights and child advocacy issues. As Director, I traveled to each country to meet my potential partners, obtain approval of government officials, review law and procedure and assure legitimate and ethical operation. Our project allowed for flexibility in each country to suit the needs but generally one older orphan was to be sponsored through college or trade school for each child adopted through our program. Post Soviet countries usually make higher education available free to youth but they need financial support to live while they study. Orphanage graduates suffer a disastrous rate of "life failure" (90%). We offered to run an early intervention project at orphanages employing the college students we sponsored supervised by college faculty. We had a wide variety of disciplines willing to consult and participate. The project was enthusiastically received in five countries out of eight. Other countries were eliminated as risky, unacceptable partners or legal impediments.

We set up a TOTAL agency and foreign fee structure of \$9,000-9,500 with \$3,000-3,500 going to educational sponsorship and Orphanage aid. All work would be performed by certified translators and licensed attorneys. Parents were expected to participate by doing the legwork (mailing, photocopying, communication, paperwork submission) but always with complete legal templates, advice and support. We provided extensive realistic adoption preparation and education materials. GGCFs adoptions were approximately half the cost of others.

The project was initiated with great enthusiasm and many applicants. We only accepted a small number of clients for the trial to minimize risk to clients and assure plenty of attention to each as we worked the first cases.

With ideal professional partners, reasonable fees and substantial humanitarian aid GGCF looked at though it might make a serious statement about alternatives to "business as usual" in adoption. But that is not what happened. One after another each country's project failed due to corruption and the flawed process of adoption which in the final analysis is always about the money at the core. Like Diogenes searching for an honest man, I am still seeking a country where ethical adoptions are possible.

Appendix B

Specific Instances of Corruption

I considered and even traveled to countries where I explored the possibility of starting a program of adoption beyond the countries mentioned below. There, before I attempted to begin a program, I discovered just how openly corrupt some lawyers and officials can be. The first country I had to eliminate involved a lawyer who wanted me to "get rich Americans and they pay \$50,000 and we split it". This was the first clue I had that practitioners and officials will frequently commit to honest and ethical practice in initial contacts, only to later assume that this is what we are expected to say but not mean. They assume that pretense of ethics and legality will be dropped once we actually start operating or even seriously talking.

Country 1 - I traveled to Country 1 and met with a high level representative of the Ministry of Education in the capital accompanied by a President of a Bar Group. The Ministry official expressed approval and optimism about our project proposal. She disapproved of private birthmother adoptions and the lack of support for orphanages in Country 1. She indicated there was a long line of Country 1 parents waiting to adopt healthy infants but were unable to because of private foreign direct birthmother adoptions arranged through private attorneys and agencies for hefty fees. She explained Country 1 parents would generally not adopt unhealthy or older children and these languished in institutions. She stated the older children would greatly benefit from support through vocational or higher education. The Ministry notified me that they would discuss the implementation of our project on a trial basis but was very optimistic.

The embassy was surprised and very excited to hear of our having made this inroad to opening of the orphanages. They visited the orphanages and reported them to be in deplorable condition. Without waiting for the project's official approval or initiation and without consulting me they notified several adoption agencies operating private birthmother programs in Country 1 that the toddlers, older and handicapped children in institutions might be available soon under our current negotiations.

I received word that the Ministry had decided they were not willing to permit orphanage adoptions, educational humanitarian aid or other projects, after all. I was given no reason. I was told the Ministry needed no educational aid for the orphans and early intervention services in orphanages would not be possible.

While disappointed I accepted this as a touchy political decision that I assumed came from higher ups. I was surprised at the complete turnaround in their attitude but if this was the decision it was out of my hands and chalked it up to a good try and focused attention on the other countries.

Several weeks later I learned of a "new" program of toddlers being available from orphanages through another US agency that had been informed of the Ministry's tentative approval of our project. I contacted the Ministry and was assured that any such program was impossible and illegal. I contacted the Embassy to ascertain what the real story was and received conflicting answers in emails and by phone as to how this was possible. I demanded answers from the Embassy as to the legal status of adoptions out of Ministry facilities and whether they were or were not legal according to the Embassy's understanding. The Embassy refused to clarify this matter. At my suggestion that either Graham's Gift was being misled by the Ministry about the legality of adoptions out of institutions, or that the agency doing adoptions out of orphanages was engaging in conduct either misrepresenting the status of these children, or some other way around the Ministry's policy, all communication stopped from the Embassy.

The last few years of countries closing to adoptions has demonstrated the damage that can be done by complaining of improprieties in adoptions. These processes need to be fixed without quite literally throwing out the baby with the bath water. I warned the Embassy that their actions in ignoring this problem were the exact type of blindness that caused fiascos that result in closures of countries to adoptions. But I did not complain of this publicly or file any formal protest for fear that the country might close if allegations of improprieties got out.

Subsequently the country has been closed anyway amid allegations of illegal actions on the part of the agency I had previously raised questions about with the Embassy. A member of their staff was arrested and the matter has not been resolved. Details of this matter have been kept very quiet. This agency's clients have been warned not to speak of the operations of this agency to anyone.

Country 2- In Country 2 GGCF entered into partnership with a Bar Group. They assigned an attorney and professor at a regional law school to the project and she in turn hired an interpreter. I met with both of them and the Minister Of Education in a trip to Country 2 to obtain approval and review procedures for what was classified as an independent adoption where the Ministry not the agency gives a referral to an applicant. The first three dossiers were sent for translation and registration with the Ministry of Education as required. My first client traveled at the alleged invitation of the Ministry yet was informed there were no children available for her except handicapped and deformed children. The Ministry denied that the dossier had been registered at all despite evidence to the contrary! The attorney claimed to have no explanation but did hold a copy of the registration and invitation. The Ministry refused to explain why I had been personally told our project and independent applications were welcome in Country 2 when I had met with her previously, but were now being rejected. Without either my or the Country 2 counsel's knowledge or approval the translator took the client to representative for a very large and well known Country 2 accredited agency who just happened to be available and was willing to "help" my client for a "fee" provided no one was told and the signature of the agency was removed illegally and provided our agency (GGCF) agreed to enter into a confidential financial arrangement. They could then "fix" our problem with the

Ministry. This practice is known as "umbrella-ing" and has been very expressly ruled by the Country 2 Ministry to be illegal. The purpose of their accreditation laws was to "eliminate the middleman assigning children and allow only accredited agencies to operate in Country 2". Yet more than a hundred agencies have continued to work unaccredited *for a price* under another agencies umbrella. They just change the names on the agency papers and Country 2 routinely ignores its own reforms.

When I declined to enter into such an illegal deal it became crystal clear that there would be no referrals for my clients in Country 2 then or at any future time without the necessary "connections".

My client complained of this attempt to solicit illegal business. The Ministry officially denounced this agency's activity to gain clients this way as illegal. They went so far as to say it would be "punished" but no referrals were available to my client just the same. Nor was an explanation of this situation given. My letters sent in protest to the Ministry thereafter were ignored. I refunded my Country 2 clients fees and reimbursed most or all of their expenses. Country 2 is notoriously corrupt. I thought that the project might do better in a country where a new start was possible, a country where the typical high profit system was not so entrenched.

Country 3- Country 3 was a program that I had the highest hope for and that I made the greatest expenditure of money and time. I made two trips to Country 3 where I met with the Bar President and head of the Legal Aid Bureau on many occasions. I attended an Executive Committee meeting where our partnership was voted on and approved and plans were made for both adoptions, educational aid projects and possible expansion to other humanitarian aid projects. We held meetings with top officials of the Ministry who gave formal approval and requested we collaborate on infrastructure support. The result was a written executed and authenticated memorandum of understanding with the Legal Aid Project of the Country 3 Bar Association whereby Graham's Gift would conduct adoptions and humanitarian aid projects with them. All parties purportedly shared GGCF's humanitarian goals and commitment of ethics.

I was referred by the Ministry to work with Orphanage X, the government approved orphanage system and also met with private Home Directors from charitably funded homes. Orphanage X works with agencies around the world including the United States. I was advised that the paid facilitator for a US agency was also a paid employee and legal consultant for Orphanage X, an enormous conflict of interest at best. I indicated that we would not enter into any agreement unless independent legal counsel were used and that we would be assured that all donations would be used for children.

I toured Orphanage X and advised them that I had been urged by the Ministry to work with them. When I told them of our humanitarian aid donations they were very enthusiastic stating that they desperately needed infrastructure support. We discussed having the aid for their organization go where it was most desperately needed rather than all to educational initiatives. A hungry child cannot study. We were willing to apply aid wherever it could do the most good. We indicated a willingness to be highly flexible in aid applications so long as they were independently monitored and confirmed for my board of directors.

Orphanage X "lost interest" in working with us with mandated accountability and proper legal relationships. They wanted both the facilitator legal fees and the donations but not if ethical standards or financial accountability was part of the deal. I decided to use other Children's Homes but soon encountered similar issues.

One director immediately requested we fund a "computer project" in addition to our proposed fees and donations. He said this request would have no effect on whether or not my clients were given a referral however there was no communication thereafter when we declined to fund it until he learned I had been in communication with the Embassy about the legal problems we were encountering.

Another Children's Home director upped the ante after our initial agreement demanding higher and higher fees for his referrals, no accounting for aid and finally a one month paid vacation to the US for himself, his wife and child! I consulted with the US Consul concerning these outrageous practices. I expected the Embassy to take action to discourage these practices but they did not. They did advise me to avoid dealing with such providers. I advised them that I hoped to only deal with the Bar Association in the future who I expected to operate ethically but that became problematic as well.

The Bar Project moved very slowly and no plans for humanitarian aid project development were forthcoming. The entire project finally came to a standstill after I was given the Bank account number of the head of the Legal Aid Bureau "in case I needed it". I declined to make a deposit. I reiterated that any funds would be channeled only through accounts in the projects' name set up for that purpose and hoped I had somehow misunderstood the meaning of this.

Communication with the Bar waned then stopped, leaving me with clients awaiting adoption through the Bar. I informed the Embassy of this final development and requested assistance and liaison with the Ministry to get my clients adoptions completed and to stop improper baby selling to the highest bidder taking place in Country 3. The Embassy committed to make a "demarche" to the Ministry concerning these allegations. I sent them a letter to deliver which they said they would. They reported that the Ministry heard my complaints but would not insert itself into any practices of children's homes. The embassy could not help me with my clients adoptions nor could they create a law abiding ethical atmosphere but hoped to work toward a more transparent system in the future when the country was better able to address these problems itself. The Ministry offered to expedite any remaining adoptions I could arrange as a courtesy. I was left to complete the three adoptions I needed to complete in Country 3 with a Director that I believed was pocketing all donations and legal fees. I did not want to deal with this man but had no other options in that country for these clients. I accepted referrals and asked the Embassy to clear them before I sent the clients to the country because I did not trust him to be giving lawfully relinquished children. There were many problems including children being offered and then withdrawn after parents supposedly reclaimed them. This director kept demanding that we provide him with a paid vacation for himself and his family to the United States for one month if we wanted these adoptions to go through. I told him that I would not send the clients if these demands persisted and he backed down.

Recently, one family has arrived and he began to harass them about the request for a trip to the US. They told him this was not going to happen at their expense as they had a contract for services not free trips. This director was very angry. The next morning the Director withdrew

the referral. He said that the mother had suddenly appeared and reclaimed the child but he was unwilling to explain the circumstances of how the baby had been abandoned for two months only to be reclaimed exactly as my clients arrived (having already paid for r/t tickets and dossier and fees) This family had held this child in their arms the night before. The child's mandatory publication period had been met.

As of this writing the family is going home without their child and does not wish to attempt to adopt a different child. They are heartbroken. The Embassy's position is that it is outside its scope to investigate. This Director has threatened to stop the remaining adoptions if I make any complaint to the Ministry.

Country 4- Our project was initiated in Country 4 and though we have not encountered corruption, we have encountered major fee increases by our attorneys there and so the program will be terminated after completion of a pending adoption as it cannot provide the agreed upon humanitarian aid under this new fee structure. Without this, an important goal of the project has failed.

Country 5- I was fortunate in Country 5 to partner with a truly extraordinary Bar Group of Country 5. This young bar group immediately impressed me with their professionalism, dedication to humanitarian goals and enthusiastic desire for democratic reforms and rule of law. After meeting them and spending a week planning our project and experiencing their sincere concern for children's futures, I was secure that the project would succeed there. I was, however, troubled by information given me by a consular officer. She indicated that bribery was routine in adoption and that it might not be realistic to do ethical "clean" adoptions as we planned. But I was confident that with our counsel knowing and able to demand their clients' rights under Country 5 law, we would overcome this problem and be able to run a lawful bribe free program.

I have heard time and again from Country 5's and other Embassies how little money the foreign Ministry workers make in their official capacities and how it is inevitable that they will demand bribes in connection with adoptions to supplement their meager incomes. While I understand the difficulties that the Embassies have in enforcing foreign laws, United States laws prohibit the participation in bribery too.

GGCF Clients prepared dossiers and ultimately submitted them. One family contacted me about a child photolisted on an agency's website. They wanted to adopt her but learned this agency had a director who was the subject of dozens of suits and over a hundred complaints in many states. He had lost his license in another state and opened in a different one under his wife's name. This family was also concerned because they had been told such an advertisement of an Country 5 child was illegal. When they contacted GGCF, I confirmed this was the case.

I informed them that I could not refer them this or indeed any child and that the only legitimate way to have her referred was via the Country 5 ministry as referrals by agencies were illegal. I suggested they contact the Ministry to find out how they could lawfully adopt her. The Ministry affirmed that no referrals may be made by agencies but that if my clients submitted their dossier and the child had not yet been legally assigned or adopted, they could adopt her. The child was not adopted and my clients flew their dossier to Country 5 to initiate her

adoption after months of delays at the Country 5 Embassy in DC where there had been unusual delays. On arrival they were told she was being "held" for a facilitator's client who did not yet have a dossier submitted notwithstanding that this practice was illegal. The Ministry confirmed this deal but would not explain why this privilege was being extended to this facilitator's clients after it had been denied to ours. When we filed in court to protect our client's rights the Ministry finally offered another one of our clients a referral. When we refused to withdraw our legal claim for the other child they withdrew that referral in retaliation and have never replaced it. None of our clients have been able to adopt in more than a year. Five other GGCF clients withdrew or were advised by me to remove themselves from our programs since the program was not viable under these circumstances.

We have spent almost a year pursuing this case through the courts, the higher ups in the Ministry and Embassy. The proceedings have been transparently corrupt with courts refusing to issue reasons for denials in contravention of law and higher court order. Repeated orders on appeal that they follow laws have been disregarded by both lower courts and the Ministry. Higher Officials in the Ministry have refused to explain the reasons for their practices. Since then complaints from parents have surfaced of absurdly high demands for money by facilitators in some cases in order to keep their referrals. The Ministry continues to give referrals of children to some agencies and facilitators in a matter of weeks while others have waited over a year and still nothing. This information was reported to the Embassy. The Ministry has explained that this particular child was a given to a facilitator to place and she was part of his exclusive inventory of available children.

The Embassies initial efforts to assist my clients in this case waned when it became clear that the bottom line was that the Ministry had no intention of explaining its actions or following its own legal procedures where "deals" and "understandings" with facilitators were involved. A now different consular officer reiterated their knowledge of the "reality" of Country 5 official's salaries and the common practice of "supplementing" it with those with whom it had understandings. At that point the Embassy became unresponsive until my clients complained to their Congressional representatives. They became re-involved with the goal of seeing "a transparent and lawful adoption process take place in Country 5". The case has been pending for a year as the case that was subjected to retaliation. The embassy knows the process is neither fair nor transparent but state they have no ability to force a lawful operation of law in Country 5.

I have expended hundreds of hours and my partners have also spent countless man hours attempting to rectify this wrong and prove that an ethical adoption can be done without improper influence or disregard for Country 5 law. We still have NO children home via GGCF in this country and if the Ministry succeeds, we never will with even the two clients we still have hanging in there while we fight. Meanwhile other providers easily bringing home babies for his clients despite the Country 5 knowing he no longer is even licensed. Graham's Gift's dream of a professional ethical, cost effective, humanitarian minded adoption agency is over in this country too due to corruption. We've run out of countries.

Attempts to do the "right thing" by legally but quietly opposing corruption have failed. My clients have been hurt, I have lost my business, several years, and a lot of money to corruption. Bringing it to the attention of appropriate authorities discretely, but then accepting "there's

nothing we can do about it " from those authorities has proven My choice to act conservatively so as "not to rock the boat" is enabling corrupt actors to continue. At this juncture, with so much at stake with Hague, I cannot in good conscience continue to keep my own counsel with governments showing no intention of cleaning things up without increased pressure and disclosure.